

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 27TH JUNE 2007 / 6TH ASHADHA 1929

WP(C).No. 22600 of 2004(M)

PETITIONER:

SMT.VEDAVATHI, W/O.M.RAMACHANDRA GATTI,
MALI HOUSE, KAIPADY VILLAGE, KUMBALA P.O.,
KASARAGOD DISTRICT.

BY ADV. SRI.M.SASINDRAN

RESPONDENTS:

1. KASARAGOD PRIMARY CO-OPERATIVE AGRL.
RURAL DEVELOPMENT BANK LTD.NO.FF.113, KASARAGOD,
KASARAGOD P.O., REPRESENTED BY ITS SECRETARY.
2. THE BRANCH MANAGER,
KASARAGOD PRIMARY CO-OPERATIVE AGRICULTURAL AND
RURAL DEVELOPMENT BANK LTD.NO.FF.113, KASARAGOD,
UPPALA BRANCH P.O., UPPALA.
3. SALE OFFICER,
THE KASARAGOD PRIMARY CO-OPERATIVE AGRICULTURAL
AND RURAL DEVELOPMENT BANK LTD., KASARAGOD
HEAD OFFICE, NAYAK'S ROAD, KASARAGOD.

BY ADV. SRI.T.SETHUMADHAVAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 27/06/2007,THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:

WPC : 22600 OF 2004

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF THE IA NO.1648 OF 2002.

EXT.P2 : TRUE COPY OF THE ORDER DT.05.10.02.

EXT.P3 : TRUE COPY OF THE APPEAL MEMORANDUM IN CMA NO.352/02.

EXT.P4 : TRUE COY OF THE ORDER DT.31.05.04 IN CMA NO.352/02.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 22600 OF 2004

Dated this the 27th day of June, 2007

JUDGMENT

An application for restoration of a suit filed against the 1st respondent Bank covered by the Kerala State Co-operative Agricultural and Rural Development Bank Act, 1984 was dismissed by the learned Munsiff for default. Though an application under Order IX Rule 9 was filed for restoration, the learned Munsiff under Ext.P2 dismissed that application mainly on the reason that there was no evidence to support the explanation offered by the petitioner for his absence on the day the suit was dismissed and also that there is anomaly in the dates mentioned by the petitioner. The learned District Judge in appeal preferred by the petitioner considered the merits of the suit filed by the petitioner. According to the learned District Judge the suit itself was apparently not maintainable in law in view of the Section 69 of the Co-operative Societies Act and Section 100 of the same Act. Obviously, also on the reason that no useful purpose will be served to the petitioner even by restoring the suit, the learned Judge passed Ext.P4 order confirming Ext.P2.

Heard Sri.M.Sasindran, counsel for the petitioner and Sri.Kodoth Pushparajan, counsel for respondents 1 and 2. Mr.Pushparajan would

fairly agree that the 1st respondent-Bank is not covered by the Co-operative Societies Act and that the learned District Judge's reference to Sections 69 and 100 of that Act were not proper. Counsel would draw my attention to Sections 19 and 22 of Act 20 of 1984 and submit that the suit filed by the petitioner is premature in terms of Act 20 of 1984. The petitioner even if she has a grievance is to approach the Civil Court only after the sale is conducted. Not that, I do not find any force in what Mr.Pushparajan submits. But obviously the suit is of civil nature and it was essential on technical reasons, that the learned Munsiff dismissed the application. Learned District Judge confirmed the order of dismissal under a wrong assumption that the issue is covered by the Co-operative Societies Act. Under these circumstances, I am of the view that it is proper to restore the suit, but only on terms.

Accordingly, I set aside Exts.P2 and P4 and allow IA No.1648 of 2002 filed by the petitioner in OS No.331 of 2000 on condition that the petitioner pays a total amount of Rs.1,500/- by way of cost. Out of the above amount, a sum of Rs.1,000/- should be paid to the 1st respondent either directly or through their counsel in this court and Rs.500/- to the High Court Legal Services Committee. Payments as directed above shall be made by the petitioner within three weeks from today. Failing payments within the stipulated time, the Writ Petition will stand

dismissed and the impugned order will stand confirmed. If payment is made, then the order of restoration will become operative and then the learned Munsiff is directed to have the trial of the suit from the stage at which the suit was dismissed.

The Writ Petition is allowed as above.

PIUS C. KURIAKOSE, JUDGE

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